

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA**

CRYSTAL BYRD and BRIAN BYRD,
Individually, and on Behalf of all Similarly
Situated Persons,

Civil No. 1:11-CV-101-SPB

Plaintiffs,

-VS-

AARON'S, INC., et al.

ELECTRONICALLY FILED

Defendants.

DEFENDANT ASPEN WAY'S RULE 12(B)(6) MOTION TO DISMISS

For the reasons set forth more fully in the accompanying Memorandum of Law, Plaintiffs' Third Amended Complaint against Defendant Aspen Way Enterprises, Inc. must be dismissed because it fails to state any viable cause of action for violation of the Electronic Communications Privacy Act (ECPA) found at 18 U.S.C. §2510, *et seq.* *Inter alia*, the Third Amended Complaint fails to establish the requisite elements of a device, an electronic communication, an interception, or communications that affect interstate commerce. Additionally, the Third Amended Complaint establishes that Aspen Way's accessing of information from Plaintiffs' computer was privileged.

As to the two remaining counts against Aspen Way, the Honorable Court has dismissed Plaintiffs' conspiracy claim and Plaintiffs' claim for invasion of privacy. To the extent these claims have not already been dismissed, there can be no claim for a conspiracy under the ECPA,

and Plaintiffs have failed to set forth a valid claim for invasion of privacy because the State of Wyoming does not recognize that tort.

Accordingly, Plaintiffs' Third Amended Complaint must be dismissed with prejudice in its entirety as to Aspen Way.

Respectfully submitted,

/s/ Anthony J. Willriott

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